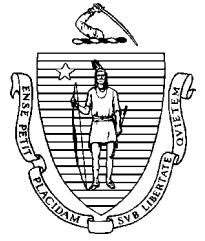




Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 449

IN THE MATTER OF GUY TARDANICO

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Dr. Guy Tardanico (Dr. Tardanico) pursuant to Section 5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 12, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of conflict of interest law, G.L. c. 268A, by Dr. Tardanico. The Commission has concluded its inquiry and, on June 16, 1992, found reasonable cause to believe that Dr. Tardanico violated G.L. c. 268A.

The Commission and Dr. Tardanico now agree to the following findings of facts and conclusions of law:

1. Dr. Tardanico was, during the time here relevant, the Stoughton School Committee (School Committee) chairman. As such, Dr. Tardanico was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. As an elected member of the School Committee, Dr. Tardanico had the responsibility for, among other matters, establishing the policies of the Stoughton School Department (School Department), reviewing and approving its annual budget, and negotiating and approving contracts with School Department employees.
3. The School Department employees are represented by six different bargaining units, each unit representing a certain type of employee. Unit A represents the school teachers.
4. The School Committee designates a subcommittee consisting of certain members of the School Committee to negotiate with each bargaining unit.
5. In or about late 1989 the School Committee designated three of its members to serve on a subcommittee to negotiate a new contract with Unit A. (The prior three-year contract was to end in the spring of 1990.) Dr. Tardanico was not a member of this subcommittee. The Stoughton Teachers Association (STA) represented the teachers regarding the Unit A negotiations.
6. At all relevant times, Dr. Tardanico's spouse was a Stoughton teacher and member of the Unit A bargaining unit.
7. Between the fall of 1989 and April 4, 1990, the subcommittee met on numerous occasions with Unit A representatives to negotiate the new contract. On April 4, 1990, the subcommittee and STA reached a tentative agreement. Basically, the agreement provided for a three year extension of the existing contract with two percent across-the-board salary increases in each of the first two years and a six percent increase in the third year.
8. By a memorandum of understanding dated June 4, 1990, the School Committee approved the actions of the subcommittee. Dr. Tardanico signed the memorandum as School Committee chairman.

9. At or about the same time, the Stoughton Town Meeting declined to fund the new contract.

10. At the October 2, 1990 School Committee meeting, Dr. Tardanico voted with the other School Committee members to petition the Board of Selectmen to call for a special town meeting for the purpose of funding the Unit A contract. Dr. Tardanico stated at that meeting that his colleagues who had negotiated with the Unit A negotiating team had done so in good faith and assured those present that, one way or another, what had been negotiated would happen, that the School Committee was obligated to meet the Unit A negotiated contract.

11. At the January 28, 1991 special town meeting, Dr. Tardanico moved as School Committee chairman to transfer \$350,406 from free cash to implement the collective bargaining agreement between the School Committee and Unit A. The motion was defeated.

12. At the February 5, 1991 School Committee special meeting, Dr. Tardanico, as chairman, encouraged the School Committee members to join with the STA in filing for arbitration.

13. At the March 5, 1991 School Committee meeting, Dr. Tardanico informed the other School Committee members that the STA was concerned about the School Committee's failure to sit down and negotiate regarding the Unit A contract. Dr. Tardanico encouraged the School Committee to resume negotiations before a March 21, 1991 arbitration hearing took place. He asked that someone make a motion to this effect. The School Committee then voted that "legal counsel be contacted and advised of the desire of the School Committee to sit down with the [STA] negotiating team to discuss and, hopefully, resolve problems with regard to teachers' contracts prior to the matter going to arbitration on March 21, 1991." Dr. Tardanico voted in favor of that motion.

14. By a memo dated March 7, 1991, Dr. Tardanico, on behalf of the School Committee, wrote to the STA stating, "It is the Committee's desire to meet with the bargaining team of the STA and discuss the ongoing situation involving the successor collective bargaining agreement between the School Committee and the STA."

15. On or about March 21, 1991, an arbitration hearing was held. The arbitrator directed the parties to resume negotiating. The parties did so.

16. At the May 9, 1991 School Committee executive session, such negotiations continued. The School Committee caucused several times. During one of those caucuses, Dr. Tardanico advocated that the teachers be given the increases that had been previously agreed to for years one and two of the three year contract extension.

17. On June 17, 1991, the School Committee made a written proposal to the STA. Dr. Tardanico did not sign that offer. The STA accepted the offer on June 19, 1991. Shortly thereafter, the School Committee, with Dr. Tardanico not participating, ratified the agreement. A written memorandum of understanding was entered into between the School Committee and the STA on or about June 25, 1991. Dr. Tardanico refrained from voting on or signing that memo of understanding, citing a conflict of interest.^{1/}

18. Except as otherwise permitted in that section, G.L. c. 268A, §19 prohibits a municipal employee from participating^{2/} as such in a particular matter^{3/} in which to his knowledge a member of his immediate family has a financial interest.

19. As set forth above, the new Unit A contract was a particular matter. In addition, the various decisions and determinations by the School Committee regarding the new Unit A contract were particular matters. Moreover, the ongoing controversy regarding whether and to what extent a new contract would be funded was also a particular matter.

20. Dr. Tardanico participated in those particular matters by his involvement in signing the June 4, 1990 memorandum of understanding, and thereafter advocating that certain action be taken regarding funding the contract, resuming negotiations, agreeing to salary increases, voting on those actions, and so forth.

21. At the time he so acted, he was aware that his wife was a Stoughton teacher and member of the Unit A bargaining unit. Therefore, he knew that she had a financial interest in these particular matters.

22. Therefore, by participating, as described above, in the process by which the Unit A 1990-1993 contract

was approved, Dr. Tardanico participated as a municipal employee in particular matters in which to his knowledge an immediate family^{4/} member had a financial interest, thereby violating §19.

23. The Commission is unaware of any evidence to suggest that Dr. Tardanico, in his actions as described above, acted other than on the merits, or was improperly influenced by virtue of his wife being a member of the bargaining unit.

In view of the foregoing violations of G.L. c. 268A by Dr. Tardanico, the Commission has determined that the public interest would be served by the disposition of this

matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Dr. Tardanico:

1. that Dr. Tardanico pay to the Commission the sum of one thousand dollars (\$1,000.00) as a civil penalty for violating G.L. c. 268A, §19; and
2. that Dr. Tardanico waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

Date: August 27, 1992

^{1/}In May 1991, a fellow School Committee member raised a concern about Dr. Tardanico being in conflict of interest by his advocating that the School Committee negotiate with the STA and that it grant certain salary increases. Consequently, counsel for the School Committee contacted the Commission regarding the issue of whether Dr. Tardanico could remain in the room when contract issues were being discussed, if he did not take part in those discussions. A Commission staff attorney advised counsel, who in turn advised Dr. Tardanico, that the best course was for him to leave the room when contract issues were discussed.

^{2/}"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{3/}"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{4/}A spouse is an immediate family member. G.L. c. 268A, §1(e).